

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.4930 of 2016

Date of Decision:05.07.2017

Prem Sagar

... Petitioner

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Jaivir S. Chandail, Advocate for the petitioner.

Ms. Balwinder Kaur, Senior Panel Counsel
for UOI-respondents.

P.B. BAJANTHRI J. (Oral)

In the instant petition, the petitioner has assailed the order dated 14.06.2001 (Annexure P-6) by which petitioner's permission to proceed on resignation has been accepted on 14.6.2001 whereby the petitioner has been informed that he is not entitled for any pensionary benefits under Rule 19 of BSF Rules 1969 (for short "BSF Rules").

The petitioner is stated to have been appointed as a Constable (GD) in the BSF. While he was working at 'C Coy 16 Bn BSF, he met with an accident while discharging official duties of "Dak Runner" due to which there is a some disability to his body. Since the petitioner was suffering from injury, he has made up his mind for resigning the post held by him on 14.6.2001. Thus, he has sought permission from the Commandant 16 Battalion BSF Shikar (Punjab) vide Annexure R-2. The Commandant passed an order on 14.6.2001 (Annexure P-6) accepting petitioner's resignation while holding that petitioner is not entitled to any pensionary benefits under Rule 19 of the BSF Rules. The petitioner feeling aggrieved by the order dated 14.6.2001 submitted application that his intention was

not to give resignation without any benefits. Thereafter legal notice was also sent on 21.08.2001. Since request of the petitioner was rejected, hence the present petition is filed challenging order dated 14.6.2001 (Annexure P-6).

Learned counsel for the petitioner vehemently submitted that petitioner has only sought permission to proceed on resignation. He has not submitted his resignation. Therefore, commandant-competent authority should have permitted the petitioner to submit his resignation or in the alternative petitioner's case should have been considered under Rule 25 of the BSF Rules instead of Rule 19 of the BSF Rules. Since the petitioner in his communication dated 14.6.2001 has specifically stated that seeking permission to seek resignation is with reference to fracture of his leg. There is a provision under Rule 25 of BSF Rules for retiring an employee on disability ground. The commandant should have suggested or suo moto should have invoked Rule 25 of the BSF Rules so as to extend some monetary benefits. It was also submitted that when the petitioner sought permission to seek resignation, on the same very date as if the petitioner submitted his resignation, the Commandant proceeded to accept the same. Thus, there is a totally non application of mind in passing order dated 14.06.2001 (Annexure P-6) and it is to be set aside.

Per contra learned counsel for the respondents submitted that having regard to the conduct of the petitioner that he was punished on more than one occasion, petitioner's resignation was accepted. Therefore, there is no lacuna or flaw in the order dated 14.6.2001.

Heard learned counsel for the parties and perused the documents.

Petitioner's request to proceed on resignation reads as under:

“To

The Commandant
16 Battalion BSF
Shikar (Punjab)

Subject: TO PROCEED ON RESIGNATION

Sir,

I, No.94004593 Constable Prem Sagar Serving in C Coy
16 Battalion BSF. My leg has been fractured. I was driver in
this unit. I am not able to perform my duties, so that I may
permit to proceed on resignation.

Comdt to accept his resignation	Sd.... 14-06-2001
and relieve him of his duties	Name Prem Sagar
Forthwith as any further retention	No.94004593
is going to be fruitful and benefits	Rank-Constable
the Force.	Unit-16 Bn BSF
	Company- 'C'

Sd.... 14/6

(1) Witness No-1

Constable Prem Sagar willingly to proceed on
Resignation.

Individual Interview and his
Resignation accepted at his
own request w.e.f. 14.6.2001

Sd.... 14.06.2001”

Pursuant to the petitioner's above request to proceed on
resignation, the Commandant should have clarified whether the petitioner is
entitled for resignation under Rule 19 or Rule 25 of the BSF Rules. The
Commandant proceeded to accept the above communication of the
petitioner seeking permission to proceed on resignation dated 14.6.2001 as
it resignation submitted by the petitioner. Therefore, there is a totally non
application of mind in passing order dated 14.6.2001 (Annexure P-6). That
apart the Commandant being the disciplinary authority/competent authority
instead of dealing with the resignation, he should have suggested to retire

the petitioner under Rule 25 of the BSF Rules having regard to the fact that the petitioner met with an accident and his leg has been fractured so also the petitioner has not submitted his resignation. Whereas he has sought permission only. Therefore, question of acceptance of his resignation do not arise.

In view of the above facts and circumstances, order dated 14.6.2001 (Annexure P-6) is hereby set aside. Consequently, petitioner is entitled to service and monetary benefits till passing further order by the Commandant with reference to Annexure R-2 dated 14.6.2001 by which the petitioner has sought permission to proceed on resignation. The intervening period from 2001 to this day shall be treated as duty for all purposes. The petitioner may be permitted to make necessary application either for resignation or for retirement under Rules 19 or 25 of the BSF Rules respectively within a period of four weeks from today. If such application is made by the petitioner, the Commandant is hereby directed to proceed further in the matter and complete the proceedings within a period of eight weeks from the date of receipt of application moved by the petitioner in accordance with law.

Petition stands allowed in the above terms.

05.07.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No